

ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE

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DIRECT TESTIMONY OF

DOMINIC RIVARA

1. Q. Please state your name, business address and present position.

A. Dominic Rivara, 301 E. Spruce St., Springfield, Il 62703. I am Business Manager for Local 51, International Brotherhood of Electrical Workers..

2. Q. Please state your educational background and professional experience.

A. I am a graduate of Hall High School in Spring Valley, Illinois. I worked between 1964 and 1975 and again between 1985 and 1990 in the physical bargaining unit for Illinois Power. The last five years, I worked for Illinois Power, I worked as a lineman on both distribution and transmission cable. Between 1975 and 1985 and again between 1990 and 1995, I worked as a Business Representative for Local 51, IBEW. Then in 1995 I was elected as Local 51's Business Manager and have been re-elected two times since then..

3. Q. What are your duties as Local 51's Business Manager.

A. Conduct and participate in negotiations leading to collective bargaining agreements with all of the employers with whom Local 51 has collective bargaining agreements. At the present time Local 51 has collective

21 bargaining agreements with fifty employers. I guide Local 51 in its
22 efforts to organize additional employers. I work with bargaining unit
24 employees in coming up with negotiating positions and adjusting those
25 positions in course of bargaining with employers. I guide the union after
26 it has negotiated agreements with employers in such matters as the
27 processing of grievances, filing of unfair labor practice charges with the
28 National Labor Relations Board, miscellaneous matters that come up
29 between Local 51, its members and employers under collective bargaining
30 agreements and in making decisions to participate in non-traditional labor
31 matters such as intervening in the present proceeding when we believe
32 they may have an impact on the wages, hours and working conditions of
33 the employees whom Local 51 represents.

34. 4. Q. Do you know Jim Berger, Gary Roan and Teresa Boehm.

35 A. Yes, they are the Business Mangers of Locals 309, 702 and 1306 of the
36 International Brotherhood of Electrical Workers.

37. 5. Q. And what do you know about their duties?

38 A. Based on my experience working with all three of them on matters of
39 joint interest, I have learned that their duties are the same or very similar
40 to mine.

41 6. Q. What is the connection of all four unions and their Business Managers to

42 Illinois Power Company?

43 A. All four Local Unions have collective bargaining agreements with Illinois
44 Power Company ("IP") and represent different groups of employees at IP.
45 Local 51 represents IP's Northern Eastern and Central Illinois physical
46 unit employees such as linemen, substation electricians, meter repair
47 employees and meter readers. Local 309 represents IP's southwestern
48 physical unit employees. Local 702 represents IP's Southern physical unit
49 employees. And Local 1306 represents IP's clerical unit employees such
50 as billing clerks, customer service representatives, and drafting clerical
51 employees.

52 7. Q. Do the four Unions have collective bargaining agreements with other
53 employers?

54 A. Yes. All but Local 1306 represent employees at other employers such as
55 electrical contractors, outside line construction companies, television
56 stations, and manufacturing facilities.

57 8. Q. How many employees do the four Unions represent at IP?

59 A. Local 51 represents 444 IP physical unit employees, Local 309 represents
60 200 IPC physical unit employees, Local 702 represents 94 IP physical unit
61 employees and Local 1306 represents 15 IP clerical unit employees.

62 9. Q. Of those employees, how many does each Local represent who devote all
63 or most of their time devoted to transmission related duties - that is duties

64 related to 138 KV power cable and above?

65 A. Local 51 represents about 15 employees who spend all or most of their
66 time on cable work, Local 309 about 15 employees, Local 702 about 15
67 employees and Local 1306 about 15_ employees.

68 10. Q. Why did the four Unions decide to intervene in the present proceedings.

69 A. For several reasons. As I said above, the four Unions (the "IBEW")
70 represent a substantial number of employees in the transmission side of
71 IP's business, any sale of that business will substantially affect their
72 working conditions. Further, given the large sum of money involved in
73 this transaction and the recent difficult economic circumstances that IP
74 has found itself in ever since it was purchase by Dynegy, the IBEW
75 believed it had a definite interest in ensuring the best possible outcome
76 for the employees it represents.

77 11. Q. By the way, for how long have the four Locals had collective bargaining
78 agreements with IP?

79 A. All four had agreements with IP at the time I began my employment with
80 IP and I believe for many of them their collective bargaining relationship
81 with IP began around the time of World War II or earlier.

82 12. Q. At the present time, are the four Unions involved in negotiations with IP?

83 A. Yes.

84 13. Q. And what, if anything, about those negotiations is related to these
85 proceedings?

86 A. We can't say there is a direct relationship, but it is significant to all of us
87 that, at the time, IP wishes to sell off a significant piece of its property and
88 assets to a third party, it has taken the toughest positions that collectively
90 all four unions can remember.

91 14. Q. Can you provide some examples?

92 A. Yes over many years, the four unions have achieved some protections
93 against unreasonable subcontracting of work that the employees we
94 represent are capable of doing, protections for reasonable rest and meal
95 periods when employees work overtime, protections for employees when
96 sick or injured. We fear that, IP is trying to eliminate or reduce many of
97 hard won worker protections and benefits just at the time it is selling off
98 one of its major components - its transmission business.

99 15. Q. In preparation for your testimony today, did you or any representative
100 of the four unions review any documents?

101 A. Yes, we asked our lawyer to review the testimony and supporting exhibits
102 submitted by IP and Illinois Electric Transmission Company, LLC
102 ("ILEC") and then report to me on what elements of the proposed
103 transaction might be of concern to the four Unions.

104 16. Q. Did the Unions determine that there are some aspects of this proposed
105 transaction that could have an impact on the working conditions of the
106 employees that they represent?

107 A. Yes.

108 17. Q. And is that what you plan to testify about today?

109 A. Yes.

110 18. Q. And looking at the proposed transaction, what immediately concerns the
111 IBEW?

112 A. Daniel Mortland of IP testified that the transaction would produce net
113 proceeds of \$239 million dollars for the sale of all of IP's transmission
114 assets of which \$84.4 million would be consumed by payment of a note,
115 \$56 million by taxes and \$2 million in closing costs, leaving the balance of
116 \$154.6 million for IP. Mortland went on to say that the net proceeds of
117 sale would be used to enhance IP's liquidity. Based on the experience of
118 so many utilities in this Country, including IP, which have become
119 a associated with companies engaging in the marketing of electricity or
120 which created energy marketing divisions, that have then let the utility end
121 of the business suffer, we are concerned that the Commission ensure that
122 all of the \$154.6 million in net proceeds generated by the sale remain with
123 IPC and not be siphoned off to bolster the other divisions or subsidiaries

124 of Dynegy. More directly, we would like the Commission to order IP to
125 use net proceeds of the sale to infuse the pensions funds (401K plans) of
126 its employees which have taken such a beating as a result of their heavy
127 reliance on the stock market fortunes of Dynegy. If that is not possible,
128 the four Unions would want the Commission to order IP to put a firewall
129 between the net proceeds of the sale to ILEC to ensure that all of the
130 proceeds remain solely with IP and get used to enhance the remaining
131 distribution side of IP's business and not get drained off to one of
132 Dynegy's other divisions.

133 19 Q. What other aspects of the proposed transaction concern the four Unions?
134 A. We are concerned by the general trend in the industry represented by this
135 transaction for the State of Illinois to give up its role in regulating a
136 natural monopoly as IP's transmission business is and will continue to be
137 to the Federal Energy Regulatory Commission ("FERC"). Quite simply,
138 issues that the four unions might have with the management of the trans-
139 mission business are less likely to addressed by a federal bureaucracy
140 focused on a nationwide transmission system than by the Illinois
141 Commerce Commission which has as its mission ensuring the provision
142 of electricity to Illinois consumers in safe, affordable, reasonable and
143 healthy manner.

144 20. Q. But knowing that Section 16-126 of the 1997 Electric Service Customer
145 Choice and Rate Control Act (the "1997 Act") mandates the creation of an
146 independent operator system for transmission services in Illinois, what
147 specific concerns do you have or, put another way, do you believe the ICC
148 should have with the proposed sale of IPC's transmission system to ILEC?

149 A. While I recognize that there is little that the ICC can do to prevent the
150 creation of independent system operator ("ISO") arrangements or
151 regional transmission organizations ("RTOs"), there is no objective reason
152 that the ICC must approve the sale of IPC's transmission assets to ILEC to
153 accomplish the requirement that IPC transfer operation of its transmission
154 to a third party. In short, while I am not a lawyer, it appears that Section
155 16-126 of the 1997 Act does not require IPC to give up ownership of its
156 to another party but simply the day to day management of that system. In
157 short Section 16-126 of the 1997 Act and the ISO proposals of FERC and
158 FERC Order No. 2000 are directed at ensuring open non-discriminatory
159 access to a nationwide transmission network and not necessarily
160 separating ownership of transmission systems from the same owners of
161 distribution and retail electric utility operations.

162 21 Q. And what in your view makes IPC a better owner of its transmission
163 system than ILEC?

164 A. Like the President of the International Brotherhood of Electrical Workers
165 recently stated in an article entitled "Throw in the Towel on National
166 Utility Deregulation," all the move to deregulation has brought to the
167 State of Illinois from what I can see, is a reduction in service and a
168 significant loss of jobs for the employees the four IBEW Locals represent
169 at IPC and other Illinois utilities. It has led, not necessarily, to more
170 competition in Illinois but to greater concentration of utilities and
171 therefore enormous power controlled by fewer and fewer people; e.g.
172 CIPS and CILCO eaten up by Ameren, the merger of Unicom and
173 PECO to create Exelon, Corp.. (Hill article, IBEW Exhibit 1.2).

174 22 Q. But isn't the split up of IPC's transmission and distribution system the
175 the opposite of concentration and, in fact, the decentralization of
176 corporate power?

177 A. Not if the transmission system presently owned by IPC is being sold to
178 a company whose goal is to become a nationwide owner of the Country's
179 transmission network.

180 23 Q. What about ILEC are you referring to?

181 A. ILEC is owned by a company called Trans-Elect, Inc. which claims to be
182 the "first and only truly independent transmission company in North
183 America" and already owns or serves as a general partner for 12, 6000

184 miles of transmission cable in the United States and Canada. (IPC
185 Announcement of sale to ILEC, IBEW Exhibit 1.3). The IBEW's
186 concern with Trans- Elect, Inc. is that it has dreams of a owning much,
187 if not all, of the nationwide grid. Further General Electric Company,
188 through its GE Capital Services subsidiary, is said to be a minority, but
189 significant, investor in Trans-Elect. As far back as June 21, 2001, GE
190 stated what its long term goals were in its investment in Trans-Elect. Its
191 Investment enables "GE Capital Global Energy to co-invest with Trans-
192 Elect as it acquires transmission assets through out the U.S.." (North
193 County Times, IBEW Exhibit 1.4). The North County Times Article
194 points out that GE and Trans-Elect would not disclose the extent of GE's
195 interest in Trans-Elect. Further, in my examination of Trans-Elect's web
196 site and other articles about Trans-Elect, I could not learn the ownership
197 of this privately held company which wants to control one of the most
198 strategic assets in the United States. At a minimum, the ICC should
199 compel Trans-Elect to disclose the full extent of its owners and the
200 percentage of their interest in Trans-Elect.

201 24 Q. What, if anything, about GE's ownership interest in Trans-Elect concerns
202 you?

203 A. GE is a big provider of equipment to the utility and electrical power supply

204 industry in this country. There is a potential conflict of interest or in this
205 case combining of interests if GE can get favored treatment in the selling
206 GE produced supplies and equipment to Trans-Elect and/or ILEC. It is
207 simply one more piece of a trend to the concentration of power in the
208 power supply business that has and will continue to adversely impact on
209 employees who build and maintain the equipment that supplies electrical
210 power.

211 25 Q. Why are you so alarmist about the impact of the sale of IPC's transmission
212 system to one company with a nationwide transmission vision?

213 A. Since deregulation came into being in Illinois, the employees the IBEW
214 represent at IPC and other utilities has steadily declined, the wages
215 and benefits and terms and conditions of employment for the majority of
216 employees at IPC and other utilities in Illinois, particularly those
217 represented by the IBEW have remained static or declined. This trend is
218 continuing and accelerating at IPC. I think it no coincidence that at the
219 very time that IPC wishes to close its deal with ILEC is also the period
220 when the four IBEW Locals that have intervened in these cases have
221 collective bargaining agreements that are due to expire. At the present
222 time, we are locked into the nastiest negotiations with IPC in which it is
223 seeking wholesale degrading of the working conditions for its employees

224 represented by the IBEW. Thus, while ILEC states that, for a period of
225 five years after the sale, it will contract out work to employees who are
226 employed by IPC, it appears to us that IPC is trying like mad to make itself
227 an attractive contractor of services by providing those services at ever
228 working conditions for the persons who actually do the work.

229 26 Q. What else concerns you about the proposed sale to ILEC?

230 A. While IPC and ILEC talked in Exhibit F to the Asset Purchase Agreement
231 called the "Services Agreement" about a contracting out of services to
232 IPC for five years from the effective date of the Agreement, we in the
233 IBEW are concerned about the period following the five years. What will
234 be the hours, wages and working conditions for the employees working on
235 ILEC's transmission system at that point? While ILEC and IPC referred
236 in the Services Agreement to IPC as the seller becoming a "Contractor" of
237 services to ILEC, as an "Owner," at no point does the Services
238 Agreement state that ILEC and IPC recognize the Labor Agreement that
239 has with the four IBEW Locals in this proceeding. At no point in the
240 "Services Agreement" or any other document related to this transaction
241 is there a commitment by ILEC to maintain or improve the existing
242 working conditions for employees working for IPC as its contractor ,and
243 by its approach to the latest round of negotiations, it certainly does not

244 look IPC has the desire to continue the reasonable working conditions
245 that have been achieved through years of collective bargaining between it
246 and the four IBEW Locals that represent its employees.

247 27 Q. What other aspects of the proposed transaction between IPC and ILEC
248 concern the IBEW?

249. A. As I said, over many years under out contracts with IPC, the IBEW has
250 been able to build some reasonable wages, benefits and working
251 for their members and employees at IPC. We are concerned by the power
252 of an owner-contractor to interfere with those contractual protections. For
253 example, I am aware of other circumstances where IPC has exercised its
254 rights as an owner to tell a tree trimming contractor that regardless of any
255 success an IBEW Local might achieve in the arbitration of a discharge
256 case between the tree trimming contractor and the IBEW Local, IPC did
257 not want the employee on its property. The tree trimming contractor was
258 forced to lay the employee off then for lack of work. What will happen
259 now to the IPC employees represented by the IBEW under a contract with
260 a "just cause" clause, if the IBEW is successful in a grievance filed against
261 IPC if ILEC insists it does not want the employee on its property? Is ILEC
262 willing to abide by all terms of the collective bargaining agreements
263 between IPC and the IBEW?

264 28 Q. What other aspects of the proposed sale of IPC transmission assets are a
265 concern of the IBEW?

266 A. In his testimony for IPC, Daniel Mortland stated that IPC will receive net
267 proceeds of \$239 million from ILEC. After paying off some notes,
268 taxes, and closing costs, Mortland testified that the balance of \$154.6
269 million will be used to enhance IPC's liquidity. We at the IBEW are
270 concerned that, because IPC is just one entity among Dynegy, Inc.'s assets
271 and that, because Dynegy, Inc.'s financial woes had such a negative
272 impact on IPC including the pensions and 401k plans of so many of the
273 employees represented by the IBEW that the Commission make sure that
274 none of the \$154.6 balance of the sale be permitted to stray from IPC to
275 Dynegy, Inc. Further, to the extent that the any of the pensions or 401K
276 plans of employees were compulsorily tied to Dynegy, the IBEW would
277 urge the ICC to direct IPC to use some, if not all, of the proceeds of the
278 proposed transaction to shore up those ailing pension and employee owned
279 401K plans. If that is not possible or desirable from the point of view of
280 the Commission, then, at a minimum, the IBEW would urge the
281 Commission to establish mechanism by which it can monitor and, if
282 necessary, disallow IPC's allocation of some or all of the \$154.6 million
283 from the proposed transaction if it is not used by IPC on its remaining

284 distribution and service systems and/or for its employees. In short, the
285 IBEW wants the Commission to ensure that, if it decides to approve a sale
286 that is not required by law and is driven by IPC's needs for liquidity in
287 in large part caused by Dynegy's misadventures, Illinois, IPC and, most
288 important IPC's employees and customers, will benefit by the sale.

289 29 Q. Will you supplement any part of your testimony before or at the time of
290 the hearings in these cases?

291 A. Yes, I will provide more exact numbers of persons represented by the
292 IBEW who work for IPC and those who work on IPC's transmission
203 related business.

294 30 Q. Does that conclude your prepared direct testimony?

295 A. Yes, it does.